

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-K-0807

VIDEOTAPED DEPOSITION OF: ERIC SAHL
January 27, 2004

DOMINION VIDEO SATELLITE, INC.,

Claimant,

v.

ECHOSTAR SATELLITE CORPORATION, and
ECHOSPHERE CORPORATION,

Respondents.

TAKEN PURSUANT TO NOTICE on behalf of the Plaintiff at
1430 Wynkoop Street, Suite 300, Denver, Colorado 80202
at 10:08 a.m. before Laura L. Corning, Certified
Shorthand Reporter and Notary Public within Colorado.

I N D E X

| | PAGE |
|--|----------------------|
| EXAMINATION OF ERIC SAHL: January 27, 2004 | |
| By Mr. Leland | 7, 246 |
| By Mr. Olsen | 232, 251 |
| By Mr. Wooten | -- |
| DEPOSITION EXHIBITS | INITIAL REFERENCE |
| 1 Notice of Deposition of Eric Sahl | 7 |
| 2 Amended Notice for Deposition of EchoStar Corporate Designee | 7 |
| 3 EchoStar Satellite Corporation's Responses to Dominion's Discovery Requests | 16 |
| 4 47 CFR Ch. 1 (10-1-02 Edition), 78.66 | 24 |
| 5 47 CFR Ch. 1 (10-1-02 Edition), 25.701 | 29 |
| 6 Report and Order | 32 |
| 7 Time line and application for public-interest programmers, year 2003 | 46 |
| 8 Letter with enclosures to Poley from Sahl, 8/28/03 | 46 |
| 9 Direct Broadcast Service Transponder Lease, Channel Use and Programming Agreement, 7/18/98 | 59 |
| 10 Deposition Transcript of Schwimmer, 6/17/03 | 71 |
| 11 Partial transcript of Preliminary Injunction Hearing | 73 |
| 12 Public Interest 2002 Public File as of 12/31/02 | 75 |
| 13 Public Interest Programming Application - Year 2003 for Tomorrow's Planet | 86 |

A P P E A R A N C E S

For the Plaintiff: THOMAS D. LELAND, ESQ.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-1816

For the Defendants: RICHARD R. OLSEN, ESQ.
ROSS WOOTEN, ESQ.
T. Wade Welch & Associates
2402 Fountainview
Suite 700
Houston, Texas 77057

Also Present: Paula Grace-Vance, CLVS

I N D E X
(Continued)

| | INITIAL REFERENCE |
|---|----------------------|
| 14 Parties' Statement of Stipulated Facts for Preliminary Injunction Hearing | 88 |
| 15 Public Interest Programming Application - Year 2003 for Universal Education Foundation | 90 |
| 16 EchoStar Satellite Corporation's Objections and Responses to Dominion's Rule 30(b)(6) Examination subjects | 96 |
| 17 Document headed, "For Immediate Release," 7/7/03 | 99 |
| 18 Letter to Dertch from Poley, 10/15/03 | 106 |
| 19 Public Interest 2003 Public File as of 12/31/03 | 110 |
| 20 Public Interest File as of 12/31/01 | 111 |
| 21 Letter to Schwimmer from Johnson, 12/30/02 | 132 |
| 22 Letter to Sahl from Lamb, 1/16/01 | 144 |
| 23 Letter to Borrillo from Lamb, 2/12/01 | 146 |
| 24 E-mails | 156 |
| 25 E-mails | 161 |
| 26 Public Interest Programming Agreement | 169 |
| 27 Side Letter Agreement, 12/9/02 | 169 |
| 28 Amendment 1 to the Public Interest Programming Agreement | 170 |
| 29 Fax to Lamb from Sahl, 3/24/03 | 172 |
| 30 E-mails | 185 |
| 31 E-mails | 186 |

Notes:

Coffman Reporting

303.893.0202
303.893.2230 FAX

SHEET 39 PAGE 367

153

1 trouble delivering signal to local receive facilities
2 in certain markets, and if we could carry the one
3 national feed, he would also avoid a signal delivery
4 cost that are required under must-carry stations. So
5 that's where it -- that's where it was.
6 Q. So is it your testimony that the fact that
7 Daystar was offering to waive all of its local
8 stations' must-carry rights was not a consideration
9 that EchoStar considered in picking Daystar as a
10 public-interest programmer?
11 A. It's my testimony that the must-carry-waiver
12 offer was not determinative. As soon as we realized in
13 2000 -- at the end of 2002 that we did not have
14 sufficient secular applicants, then we looked at
15 Daystar as a qualified religious applicant, and we
16 certainly, also, looked at the ability to carry one
17 national feed instead of the same feed across multiple
18 channels' bandwidth.
19 Q. Were any of Daystar's local broadcasts
20 currently exercising their must-carry rights?
21 A. I believe some were.
22 Q. Were they using spot beams or a full conus or
23 part conus? Do you know?
24 A. If I could look at the list of the stations
25 again, I could tell you. I'm guessing that most were

PAGE 369

155

1 Q. Okay. So -- so the must-carry waiver was a
2 consideration in -- strike that. The must-carry waiver
3 was a factor in EchoStar's choice of Daystar as a
4 public-interest programmer, correct?
5 MR. OLSEN: Objection, asked and answered.
6 MR. WOOTEN: Several times.
7 A. Once we -- there is a threshold, and the
8 threshold is the unavailability of a sufficient number
9 of qualified secular applicants. Once we were there,
10 we had to choose among qualified religious applicants,
11 and the choice we made was Daystar.
12 Q. (BY MR. LELAND) Okay.
13 A. And let me just say again, that we chose
14 Daystar. I would say certainly one of the
15 considerations was the must-carry waiver. Other
16 considerations were trying to maintain a competitive,
17 even playing ground with DirecTV. The fact that
18 DirecTV carried them on a national basis was certainly
19 significant to the decision, the fact that they had
20 been a long-term programmer that appeared to have the
21 financial wherewithal and viability to remain a
22 public-interest programmer was certainly a factor as
23 well.
24 Q. Now, you received the applications for --
25 strike that. You testified that the committee to pick

PAGE 368

154

1 conus at the time. I'm trying to remember exactly when
2 spot technology became available, but there might have
3 been a mix of some spot and some conus.
4 Q. So by getting -- by Daystar waiving these
5 must-carry rights, EchoStar was able to use that full-
6 conus spectrum for some other use?
7 A. Well, understand, we're getting spectrum back
8 anyway, because that's the beauty of having Echo VII
9 and Echo VIII, which are our two spot-beam satellites,
10 launched. That replicates bandwidth. So you do
11 harvest conus bandwidth with the advent of spot-beam
12 technology.
13 Q. So is it EchoStar's position that it had no
14 choice but to offer Daystar public-interest carriage
15 for 2003?
16 A. I don't believe that's our position. We had
17 no choice but to offer a religious programmer public-
18 interest carriage in 2003, because we lacked sufficient
19 numbers of qualified secular applicants. It so happens
20 that we chose Daystar for carriage.
21 Q. Did you choose Daystar for carriage over other
22 Christian applicants because they were offering a
23 must-carry waiver?
24 A. Perhaps. We certainly chose them over -- over
25 other Christian applicants.

PAGE 370

156

1 program -- public-interest programmers for 2003 was
2 sometime in late November, early December 2002,
3 correct?
4 A. That's my recollection, yes.
5 Q. Okay. So until that time, there had been no
6 determination that you would need to look to
7 Christian/religious programmers rather than secular
8 applicants, right?
9 A. Yes.
10 MR. LELAND: Okay. This will be 24.
11 (Deposition Exhibit 24 was marked.)
12 Q. (BY MR. LELAND) Mr. Sahl, Exhibit 24 is an
13 e-mail exchange between you and Marcus Lamb dated
14 between October 31 and November 1 of 2002. Do you see
15 that?
16 A. Yes.
17 Q. Now, this e-mail exchange occurred prior to
18 the EchoStar public-interest committee meeting to
19 determine who they were going to put on for 2003,
20 right?
21 A. Absolutely.
22 Q. Okay. And below the -- the bottom e-mail is
23 dated October 31 from Marcus Lamb to you and to Angela
24 Borrillo, "Subject: More must-carry for Daystar?"
25 A. Correct.

1 MR. OLSEN: Tom, before you start, during the
2 break the witness indicated to me that he wanted to
3 look at a couple exhibits because he may have a
4 clarification. I told him to tell you what exhibits
5 they were.
6 A. If I could just briefly comment on Exhibit 7
7 and 25.
8 Q. (BY MR. LELAND) One second here. What's 7?
9 A. 7 is the 2003 application cover.
10 Q. Okay.
11 A. When I was reading Exhibit 25 at the break,
12 the lower part of the e-mail says, from -- from myself
13 to Marcus Lamb, "My understanding is that a letter is
14 being mailed to all applicants." That's the rejection
15 letter and -- and that's November 8. And so I wanted
16 to go back and look at the time line when I was a
17 committee member, and -- and it's clear to me that we
18 met in October, not in mid-November. And the decisions
19 were made at some point in October with rejection
20 letters going out first half of November.
21 So when I'm saying that we met by mid-November
22 or later, I'm clearly wrong, and you can see the time
23 line in Exhibit 7, too, that talks about the EchoStar
24 decision process, meaning looking at -- looking at the
25 various applications, and -- and having the committee

1 A. I'm saying based on the documents I must be
2 wrong, because all the conversations don't make sense
3 if the meeting hadn't occurred yet. There is no reason
4 I would send a note to Marcus saying letters are going
5 out to all applicants if we hadn't met yet. We clearly
6 had already met sometime in October.
7 I am just trying to be logically consistent
8 with the time line, and I apologize that my memory
9 didn't serve as to when the actual meeting was.
10 Q. Well, I recall your testimony on the time line
11 for meeting was pretty unequivocal as to when it was.
12 A. It was. And I'm telling you I was wrong.
13 MR. WOOTEN: Wait a minute. Wait a minute.
14 I'm going to object to how he characterizes your
15 testimony. Go ahead.
16 Q. (BY MR. LELAND) You were going to answer, "It
17 was. And I'm telling you I was wrong." Okay. All
18 right. Any other testimony you want to change?
19 A. Not yet.
20 MR. WOOTEN: Objection.
21 MR. LELAND: What's the objection?
22 MR. WOOTEN: It's badgering the witness. I
23 mean, I sat through Dominion's witnesses, you know,
24 clarifying things. I don't think it's fair for you to
25 sit here and try and badger him or insult him because

1 meeting would have occurred then. And, in fact, the
2 deadline to return signed copies of a public-interest
3 contract was November -- November 15. So I don't
4 believe there was any way that the meeting could have
5 been that late in the year, and I just wanted to point
6 that out.
7 Q. Okay. So you're changing your testimony as to
8 when the public-interest committee met for the year
9 2003?
10 A. I am. It must have been in October.
11 Q. And you're basing that on the time line in
12 Exhibit 7?
13 A. And -- and -- and -- for example, I could go
14 back and look at all the exhibits, but when I'm sending
15 a note to Marcus on November 8 via e-mail saying, "My
16 understanding is that a letter is being mailed to all
17 applicants next week," it appears to me that decisions
18 had been made by that time and letters were in the
19 process of going out, as of November 8.
20 Q. Are you basing the change in your testimony
21 today on the documents or on any independent
22 recollection?
23 A. On the documents.
24 Q. Okay. So you're saying that based on the
25 documents, you must be wrong?

1 he wants to clarify something, because he read exhibits
2 at the break, which obviously you didn't give him a
3 chance to read when he was answering his questions.
4 MR. LELAND: So the objection is I was
5 badgering the witness?
6 MR. WOOTEN: I stated my objection.
7 MR. LELAND: Your objection is noted.
8 MR. WOOTEN: Thank you.
9 Q. (BY MR. LELAND) Now, was -- Daystar was
10 eventually broadcast as a public-interest programmer by
11 Dish Network, right?
12 A. Yes.
13 Q. And Daystar also waived the must-carry rights
14 of its local stations, correct?
15 A. Yes.
16 Q. Was the broadcast of Daystar a condition --
17 excuse me. Let me rephrase. Was the waiver of
18 Daystar's local stations' must-carry rights a condition
19 of EchoStar's choice of Daystar as a public-interest
20 programmer?
21 A. I wouldn't say it was a condition. It was
22 certainly a factor in selecting them for public
23 interest.
24 Q. It was not, in fact, made part of the public-
25 interest programming agreement?



Order Toll Free 877-604-6521 • 8am-6pm PST M-F
VIEW CART | CONTACT US | TELL A FRIEND

30-Day
Money Back
Guarantee!

Natural Vegan Beauty Products. Hair Care, Skin Care, Makeup, and Cosmetics for Women & Men

? **Where is
BeautyWalk.com?** ?
CLICK HERE TO FIND OUT!

SHOP LAMAS

- [Lamas Beauty Kits](#)
- [Night Radiance](#)
- [Hair Care](#)
- [Skin Care](#)
- [Beauty & Health Books](#)
- [Product Testimonials](#)
- [Press Coverage](#)
- [About Us](#)
- [Gift Certificates](#)
- [Guarantee](#)
- [Product Feedback](#)
- [Request Catalog](#)

LAMAS BEAUTY
Browse
BEAUTY
Search
Entire Site
GO

As recommended by the
Beauty Editors at Redbook
and Good Housekeeping
magazines!



Learn how to be a more beautiful you . . . with Peter Lamas' inspiring new books!

Get all 4 of Peter's
books at a special
introductory price!

[More Information](#)

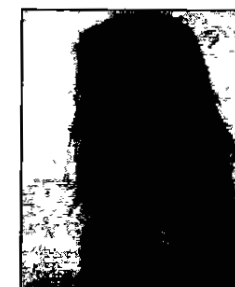
All 4 books, only \$27.50

ORDER NOW!

Our most popular kit --
an incredible value!



**free gift certificate
from lamas
beauty**
Spend \$150 and receive
a \$25 gift certificate!
Upon Checkout write
FREEGIFT
in the Comments Box



**Lamas Beauty Fan
Alicia Silverstone:**
"Lamas Beauty makes a
nice protein shampoo --
delicious and clean! My
hair feels so good when I
use it."
[More testimonials](#)

lamas beauty products

- [Lamas Beauty Kits](#)
Best Value
- [Books by Peter Lamas](#)
New
- [Soy Moisturizer](#)
- [Wheat Grass Shampoo](#)
- [Soy Hydrating Shampoo](#)
- [Rice Protein Shampoo](#)
- [Chinese Herbal Shampoo](#)

Lash Masque Natural Lash Builder, Tint & Conditioner, for fuller, thicker and longer lashes -- while you sleep!

-- Price \$16.50

📞 **ORDER NOW!**



Cosmeceutical Skin Care Collection Award-winning

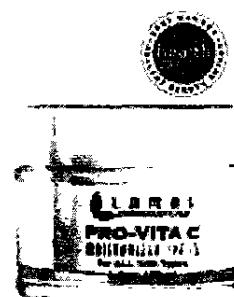
Moisturizer, Vital Infusion Complex, Eye Maintenance Gel, Radiant-C Face & Body Wash

-- Sold Separately \$137

-- Kit Price \$89!

-- You Save \$48.00!

📞 **ORDER NOW!**



Award-winning Lamas moisturizer -- Dermatologist recommended, *Best Moisturizer of the Year* -- price \$36.00

📞 **ORDER NOW!**

As recommended by the Beauty Editors at Cosmopolitan and W magazines!

- Soy Conditioner
- Vitamin C Body Wash
- DMAE Anti-aging Serum
- Vitamin C Moisturizer
- Eye Maintenance Gel
- Foundation Alternative
- Lip Conditioner
- Lash Conditioner
- Eye Complex w/ Emblica



Try all our great shampoos!

- Normal to Oily
- Fine, Limp
- Thinning, Balding
- Dry, Chemically Treated, Damaged
- Conditioner



Save money! Check out all the great Lamas Beauty kits!



Special! Night Radiance Kit Skin Care and Color combined!

-- Sold Separately \$100.50

-- Kit Price \$59.95

-- You Save \$40.55!

📞 **ORDER NOW!**



Peter Lamas
Founder &
Product Developer
Learn more about Peter

Video beauty tip for long hair.

WINDOWS MEDIA
Dialup | DSL/Cable

Order online today or call toll free!
877-604-6521 -- 8:00 am - 6:00 pm PST (M-F)

Yahoo! Top Service Award Holder for Superior Customer Service! And a BBB Gold Star Award Holder!

BEAUTY KITS | NIGHT RADIANCE | HAIR CARE | SKIN CARE | SHOPPING CART | CUSTOMER SERVICE | REQUEST CATALOG

NEWSLETTER - PRIVACY POLICY - INVESTOR RELATIONS - BECOME AN AFFILIATE



NO ANIMAL TESTING OR INGREDIENTS (100% VEGAN)
Copyright © 2004 Lamas, Inc ALL RIGHTS RESERVED.

Also, pay with
PAYPAL or PERSONAL CHECK





Order Toll Free 877-604-6521 • 8am-6pm PST M-F
VIEW CART | CONTACT US | TELL A FRIEND

30-Day
Money Back
Guarantee!

SHOP LAMAS

- [Home](#)
- [Lamas Beauty Kits](#)
- [Night Radiance](#)
- [Hair Care](#)
- [Skin Care](#)
- [Beauty & Health Books](#)
- [Product Testimonials](#)
- [Press Coverage](#)
- [About Us](#)
- [Gift Certificates](#)
- [Guarantee](#)
- [Product Feedback](#)
- [Request Catalog](#)

? Where is BeautyWalk.com? ?
CLICK HERE TO FIND OUT!

free gift certificate
from Lamas
beauty

Spend \$150 and receive
a \$25 gift certificate!
Upon Checkout write
FREEGIFT
in the Comments Box

LAMAS BEAUTY

BROWSE

Browse

BEAUTY

Search

Entire Site

GO

Investor Relations

Lamas Beauty International Investor Relations Public Relations Information for Lamas, Inc.

Lamas Beauty -- The Company

Lamas Beauty International is a manufacturer and marketer of highly innovative all-natural hair care and skin care products.

Founder Peter Lamas is one of the most respected beauty experts in the world. His client list reads like a Who's Who of Celebrities - Jackie Onassis, Elizabeth Taylor, Goldie Hawn, Sharon Stone, Cindy Crawford and Kate Winslet, to name but a few. His work has spanned numerous television, video, print and film projects, including designing the gorgeous make-up used in James Cameron's blockbuster epic, Titanic.

Lamas Beauty International is committed to producing products that are free of any animal ingredients whatsoever. Additionally, we do not test our products on animals. We don't have to. The natural ingredients in our products are safe, nourishing, and have been used by humans for eons.

Our product formulations are highly innovative, on the cutting edge of the fastest growing market segments in the Personal Care Industry.

Our product innovations include:

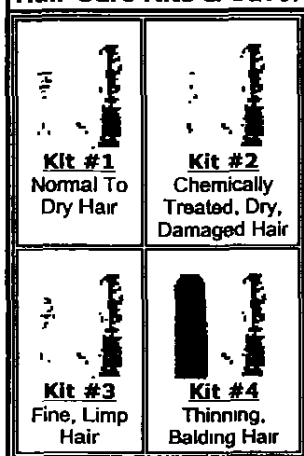
- 100% pure and natural hair care products
- Breakthrough treatment products that combine the benefits of state-of the art, anti-aging skin care and makeup
- Technologically advanced & botanically enriched cosmeceutical skin care products

Commitment to Beauty Information and Education

The Company's beauty informational website, BeautyWalk.com, is in its 3rd year of

**Subscribe to the Lamas
Beauty Newsletter!**
Enter email address
and press Submit.

Lamas Botanicals
Try our All-Natural
Hair Care Kits & Save!



operation, and is one of the most successful women's oriented online communities. BeautyWalk.com maintains a significant audience and enjoys online traffic growth with each successive quarter. Our commitment has been to provide women (and men!) the best possible information with regards to inner and outer beauty issues, tips and instructions, with the added benefit of wellness information and lifestyle issues. Founder Peter Lamas and a team of highly credentialed contributing authors and experts, all of which we're proud to be associated, ensure that BeautyWalk continues to live up to its mission and remain a vital online destination.

Media

The Company enjoys a significant amount of editorial coverage in consumer and trade media. Recent media mentions include People (English and Spanish editions), W, Self, Fitness, Women's World, Latina, YM, the Chicago Tribune, and many others.

A complete media kit is available upon request.

Investment Inquiry

The Company is in its 4th year of business operations, remains debt free, and is rapidly gaining market share for its products in salons, health food stores, catalog sales and online channels through its own flourishing web sites, which include BeautyWalk.com, LamasBeauty.com and NightRadiance.com.

Accredited Investors now have a rare opportunity to become part owners of this rapidly expanding enterprise in the beginning stages of its development.

For more information contact Douglas Newsom at 888-738-7621; serious inquiries only.

Order online today or call toll free!
877-604-6521 -- 8:00am to 5:00pm (PST) M-F

Yahoo! Top Service Award Holder for Superior Customer Service! And a BBB Gold Star Award

MAKE UP | HAIR CARE | SKIN CARE | SHOPPING CART | CUSTOMER SERVICE | REQUEST CATALOG
NEWSLETTER - PRIVACY POLICY - INVESTOR RELATIONS - BECOME AN AFFILIATE - CONTACT US



100% Safe & Secure

NO ANIMAL TESTING OR INGREDIENTS (100% VEGAN)
© 2004 Lamas, Inc. All Rights Reserved.

Also, pay with
PAYPAL or PERSONAL CHECK



Before The
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
SEP 25 2003
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Complaint Of)

Arkansas 49, Inc.)
Licensee of Television Station KYPX)
Camden, Arkansas)

File No. CSR - 6234-M

Request for Carriage)
against EchoStar Satellite)
Corporation)

To: Media Bureau

OPPOSITION TO COMPLAINT

EchoStar Satellite Corporation ("EchoStar"), by its attorneys, and pursuant to Sections 76.66(m)(4) and 76.7 of the FCC's rules, 47 C.F.R. Sec. 76.66(m)(4) & 76.7, hereby files this Opposition to the must carry Complaint filed by Arkansas 49, Inc. ("Arkansas 49"), on or about August 22, 2003.¹ In support of this Opposition, EchoStar submits:

I. ARGUMENT

A. Factual Background

Arkansas 49 is the licensee of full-service television station KYPX, Camden, Arkansas ("KYPX"), which operates on Channel 49. Camden lies at the far outskirts of the Little Rock-Pine Bluff, Arkansas television market, more than 101 miles from EchoStar's Local Receive Facility (LRF) in Little Rock. EchoStar began delivering local-into-local programming to the Little Rock DMA on or about July 2, 2003.

¹ The Complaint appeared on Public Notice September 5, 2003, Report No. 0086. This Opposition is being filed within 20 days of the Public Notice, and thus is timely.

KYPX cannot deliver a usable over-the-air signal to the Little Rock LRF, which Arkansas 49 admits.² Instead, Arkansas 49 seeks to deliver KYPX's programming to the Little Rock LRF via satellite, and claims that it "formally pledges that it will pay for and install the equipment necessary to deliver and receive a good quality KYPX signal at EchoStar's Little Rock LRF."³

EchoStar currently does not receive any local signals via satellite, throughout the 71 markets in which it delivers local-into-local service. Moreover, EchoStar is incapable of accommodating a satellite receive dish at its Little Rock LRF because of physical space limitations under its existing lease. Since EchoStar leases space from a local television station for its LRF, EchoStar has requested that Arkansas 49 deal with Clear Channel to lease the necessary physical accommodations to install a satellite dish. Arkansas 49 has refused, instead filing the instant Complaint.

For the reasons set forth herein, EchoStar submits that the Bureau should reject the instant Complaint, and find that EchoStar is not required to pay the cost of accommodating a satellite dish for KYPX. The cost of housing such extraordinary measures as this should be borne by the local television station.

B. The Costs of Delivering a Usable Signal Fall Upon the Local Television Station; DBS Operators are Only Required to Absorb the Cost of Providing Facilities for "Comparable" Reception

The Commission's Rules call for a local television station to bear the costs of delivering a usable signal to a DBS provider's LRF if that signal must be delivered in a mean other than off-air reception.⁴ The only limitation on this is that DBS providers, like cable operators, cannot shift the cost of "routine reception of broadcast signals to those

² Complaint, pp. 1, 3.

³ *Id.* at 4.

⁴ See 47 U.S.C. § 338(b)(1); 47 C.F.R. § 76.66(h); *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues (Report and Order)*, 16 FCC Rcd. 1918, 1949-51 (2000).

stations seeking mandatory carriage status."⁵ Further, cable operators may not require a station to enter into a separate lease agreement "for the installation of reception equipment comparable to that used for the reception of other signals."⁶ In this context, the Bureau has required a DBS operator to provide adequate tower space for the installation of an amplifier and ghost-canceling equipment, which together weighed approximately two (2) pounds.⁷

Contrary to Arkansas 49's assertion, however, installing a satellite receive dish is a far different matter than hanging another off-air receive antenna from an existing tower or mast at an LRF, or adding two pounds of additional equipment. Upon its best information, the dish required to receive the satellite feed from Arkansas 49 would need to be at 1.2 to 1.8 meters (approximately 4 to 6 feet) in diameter.⁸ Such a dish would require sufficient support structure to accommodate its weight and wind load, as well as be positioned in such a way as to have a clean line of sight to the transmitting satellite. Such receive equipment is a far cry from the two pounds mandated in *Norwell Television*, and in no way is "comparable equipment" as contemplated in *Suburban Cable TV*.⁹

Although Arkansas 49 is correct that the Commission has stated that a local television station can deliver its signal to a cable system via satellite (and by implication, to a DBS provider),¹⁰ the Commission has never found that cable systems (or DBS

⁵ *Suburban Cable TV Co., Inc. (WMPZ-TV)*, 16 FCC Rod. 10790 (CSB, 2001).

⁶ *Id.*, ¶ 21.

⁷ *Norwell Television LLC v. DirecTV, Inc.*, 17 FCC Rod. 10573 (2002) ("*Norwell Television*"). Arkansas 49 cites this case, and in several places declare the facts "very similar" to its request to install a satellite receive antenna at the Little Rock LRF. See Complaint, p. 6. As demonstrated herein, 2 pounds of equipment and a 4-6 foot satellite dish are not "very similar" at all in terms of the burdens placed on the receive site.

⁸ See Declaration of Paul James, appended hereto.

⁹ See *supra*, n. 5.

¹⁰ Complaint, p. 4, citing *Rancho Palos Verdes Broadcasters, Inc. v. Lone Pine Television, Inc.*, 18 FCC Rod. 7068 (MB, 2003). That case did not involve the issue of who should have to pay for the additional costs such an installation would impose in a rented LRF context. There, the

providers) must bear the costs of assuring adequate real estate or support structure for such extraordinary facilities.

As indicated above, EchoStar currently does not receive any local stations via satellite. EchoStar leases tower and/or roof space for its LRFs across the country. Such leases allow for the installation of sufficient towers or masts to hang off-air receive antennas, plus sufficient "rack space" to accommodate the delivery of signals via fiber or other land-line delivery. Such LRF leases do not provide sufficient space for the installation of satellite receive dishes. In the case of Little Rock, EchoStar has a signed lease agreement with Clear Channel for the following space:

| | |
|---------------------------------|---|
| Total leased ground space: | 10' x 17' |
| Equipment building space: | 9' x 16' |
| Total leased tower space: | Antenna mount height (AGL): 1 (each) 20' mast mounted between 80' and 100' feet. |
| Total off-air receive antennas: | 8 |
| Types of antennas: | Scala Model CL-24 (2 each), Scala Model HDCA-10 (2 each) |

EchoStar has the ability to receive KYPX either off-air or via fiber, and has suggested a number of alternative delivery methods comparable to those used by stations in the other 70 markets where EchoStar delivers local-into-local service. EchoStar does not have the ability or right to allow Arkansas 49 to install a satellite receive dish on the Clear Channel property. An amendment to that lease agreement will be required, and EchoStar should not be saddled with that cost – a cost that will *only* benefit KYPX, and cost EchoStar has never previously been required to absorb. Such an amendment will do nothing to "contribute to the general maintenance of the . . . system's facilities."¹¹ If Arkansas 49 is unable to deliver a usable signal to the Little Rock LRF using

issue was whether a television station could deliver its signal via satellite to an existing (and presumably owned) cable headend of a rural cable system.

¹¹ *Suburban Cable TV*, ¶ 21.

"comparable facilities," it must be willing to absorb the cost of such delivery, including securing the added infrastructure unique to its delivery mode.

C. Arkansas 49 Has Failed to Provide Adequate Assurances That What it Will Deliver Via Satellite is Actually KYPX's Signal

As indicated above, KYPX is the only local television station which has requested leave to deliver its signal via satellite. This, therefore, is a case of first impression for both EchoStar and the Bureau. What is troubling to EchoStar is that it is unclear exactly what Arkansas 49 plans to deliver to EchoStar. Although Arkansas 49 blithely states that what it plans to deliver via satellite is KYPX's signal, a closer analysis indicates that the signal EchoStar would receive may be something less than the full KYPX signal.

In its Complaint, Arkansas 49 describes KYPX as "a full-power, commercial television station that broadcasts PAX TV programming, religious programming, news, entertainment, local public affairs, children's programming, emergency broadcasts, and program-length presentations of local and national businesses and community organizations."¹²

Arkansas 49 claims that it can deliver "a good quality KYPX signal via satellite," from the "Equity Broadcasting" satellite.¹³ What EchoStar does not know, however, is whether the Equity Broadcasting satellite will deliver the full KYPX signal, or some "centralcasted" signal which will include the KYPX programming, but may not include all local material, and especially such things as the local EAS alerts from the station.¹⁴ A review of the Equity Broadcasting (parent company of Arkansas 49) web site indicates

¹² Complaint, p. 2. Footnote 1 to that paragraph states: "The program-length presentations are procured by Arkansas 49; the Station does not program infomercials broadcast on PAX TV."

¹³ Complaint, p. 3.

¹⁴ This is especially troubling because although the Complaint talks of "KYPX's signal" delivered via satellite, the supporting Declaration of Doug Krile states only that Arkansas will deliver "a signal of good quality," and does not specifically declare that the signal which EchoStar would receive via satellite is the exact KYPX signal.

that Equity feeds programming to a number of its stations via a "C.A.S.H." (Central Automated Satellite Hub) system.¹⁵ Equity describes the system as follows:

This centralized video production facility allows us to custom-build graphics, promotional spots and specialized programming for our stations in other markets. Coupled with our digital video server-based master control operation, *we feed full programming schedules* to multiple stations from our Little Rock operations center.¹⁶

Feeding a station its "full programming schedule" via satellite, and feeding the signal of a station to EchoStar are two completely different things.¹⁷ If all that Arkansas 49 proposes is to feed the programming of KYPX to EchoStar, then EchoStar submits that this is insufficient. What if there is a local emergency causing the station to override the regularly scheduled programming to provide emergency news and information? How will EchoStar receive this broadcast?

Moreover, if the signal delivered by satellite is anything less than the entirety of the local KYPX signal, there is a significant question as to whether EchoStar could then retransmit that signal under the Satellite Compulsory License.¹⁸ The Bureau, therefore, should require Arkansas 49 to demonstrate that what it will deliver to EchoStar is the

¹⁵ See <http://www.ebcorp.net/cash.htm>.

¹⁶ See http://www.ebcorp.net/ebc_philosophy.htm (emphasis added).

¹⁷ For example, in the DBS must carry proceeding, KQED objected to the carriage of the PBS national feed as not properly representing the signals of PBS affiliates. *SHYLA Report and Order*, 16 FCC Rod. at 1956-57, ¶ 90. The Commission concluded that carriage of the national PBS feed was a proper interim solution until carriers were able to comply with Section 338. The copyright license for the national feed expired on January 1, 2002, when DBS providers were required to begin carrying local PBS affiliates under the new local-into-local regime. *Id.* It appears that what Equity Broadcasting will provide EchoStar is more akin to a network feed than the actual signal of KYPX.

¹⁸ 17 U.S.C. § 119. See *Hubbard Broadcasting, Inc. v. Southern Satellite Systems*, 777 F.2d 393, 402 (8th Cir. 1985), cert. denied, 479 U.S. 1005 (1986) (court made a distinction between the substitution of commercials and the substitution of other programming; the former did not violate the compulsory license, the latter certainly would).

exact signal of KYPX. If there are any differences in that signal (e.g., any changes of programming or the inability to pass through local EAS warnings), then the Bureau should conclude that the signal does not qualify for carriage as a "local" television station under SHVIA.

Moreover, to the extent that there are any signal differences, prior to ordering EchoStar to accept such a signal, the Bureau should require that Arkansas 49 obtain an order from a court of competent jurisdiction that the retransmission of signal by EchoStar does not violate the DBS compulsory license found in Section 119 of the Copyright Act, potentially subjecting EchoStar to huge copyright infringement liability.¹⁹

II. CONCLUSION

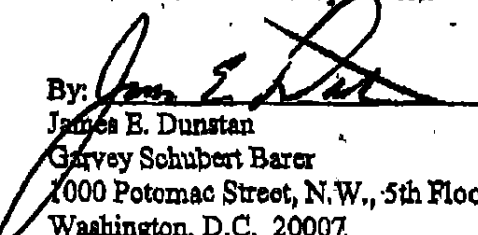
The instant case presents two novel legal questions which have been generated because a station demanding "local" carriage is so far removed from EchoStar's Local Receive Facility in the heart of the market that the only way to deliver the programming for carriage as a "local" station is by satellite. This case strains to the breaking point the concept of local-into-local service. Given that a station so far away seeks to expand its coverage beyond its natural over-the-air signal, the rules make clear that it is the station's burden to bear the costs directly associated with its delivery of an alternative feed. EchoStar's LRF lease is sufficient to allow for the delivery of KYPX's signal in a form comparable to others in the market (e.g., over-the-air or via fiber), but does not provide the necessary infrastructure to allow Arkansas 49 to install a satellite receive dish. The cost of obtaining such unique infrastructure, therefore, rests with Arkansas 49.

¹⁹ 17 U.S.C. § 119.

Since this is the first instance whereby EchoStar has been asked to take a satellite feed of a local signal, EchoStar further needs assurance that what it will receive will be the actual KYPX signal, and not some "centralcasted" multi-station hybrid feed which does not contain all of the local content of KYPX (including EAS warnings). To require EchoStar to carry anything less than the true local signal of KYPX is antithetical to the concept of "local-into-local" signal delivery contemplated by Congress in SHVIA.

WHEREFORE, for the reasons set forth in this Opposition, EchoStar requests that the Bureau deny Arkansas 49's Complaint.

Respectfully submitted,
EchoStar Satellite Corporation

By: 
James E. Dunstan
Garvey Schubert Barer
1000 Potomac Street, N.W., 5th Floor
Washington, D.C. 20007
202-965-7880

David Goodfriend, Esq.
Director, Legal and Business Affairs
EchoStar Satellite Corporation
1233 20th Street, N.W.
Washington, D.C. 20036

September 25, 2003

Vice President
**DECLARATION OF ERIC SAHL,
DIRECTOR, PROGRAMMING, ECHOSTAR SATELLITE CORPORATION**

**IN SUPPORT OF OPPOSITION TO MUST CARRY COMPLAINT
OF ARKANSAS 49, INC. ("ARKANSAS 49")**

I, Eric Sahl, do hereby declare and affirm as follows:

1. I am over the age of twenty-one, and I make this Declaration on the basis of my own personal knowledge, in support of the foregoing Opposition to Arkansas 49's must carry Complaint.

Vice President
2. I am the ~~Director of Programming~~ for EchoStar Satellite Corporation ("EchoStar") in charge of a task force created to implement and comply with federal must carry regulations. As such, I am in charge of primary communications with broadcast stations concerning their carriage on the EchoStar system.

3. EchoStar began providing local-to-local service to the Little Rock DMA on July 2, 2003. We received a must carry election from Arkansas 49 for KYPX, licensed to Camden, Arkansas, at the outer fringe of the market.

4. My engineers informed me that due to the distance (approximately 100 miles), there was no way that KYPX could deliver a usable signal to the Little Rock Local Receive Facility (LRF). We informed Arkansas 49 of this fact, and invited them to inform us if they planned to deliver the signal via an alternative means.

5. Arkansas 49 then informed us that they wanted to deliver the KYPX signal via satellite, at which point we agreed to accept this alternative delivery, but only if Arkansas 49 agreed to bear the costs of such reception. Arkansas 49 has agreed to pay for the satellite receive dish, but not for the additional infrastructure costs at the LRF that receipt of a satellite-delivered signal will entail. On August 22, 2003, I informed Arkansas 49

that they should contact Clear Channel, from whom we lease space for our Little Rock LRF, to arrange for the additional space required and other infrastructure issues related to delivery of KYPX's signal via satellite.

6. I have reviewed the Arkansas 49 Complaint, and the attached Opposition, and declare that the facts contained in the Opposition are true and correct to the best of my knowledge and belief formed after reasonable inquiry, that the Opposition has a sound basis in both fact and law, and is not interposed for the purpose of delay or any other improper purpose.

I, Eric Sahl, on behalf of EchoStar Satellite Corporation, do hereby declare and affirm, under penalties of perjury, and after first being warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. §1001), that all statements made by me in the foregoing Declaration are made on my own personal knowledge, and those statements are true.

By: 

Vice President
Eric Sahl, Director of Programming
EchoStar Satellite Corporation

Dated: September 25, 2003

**DECLARATION OF PAUL B. JAMES,
FIELD ENGINEERING MANAGER, ECHOSTAR SATELLITE CORPORATION
IN SUPPORT OF OPPOSITION TO MUST CARRY COMPLAINT
OF ARKANSAS 49, INC. ("ARKANSAS 49")**

I, Paul B. James, do hereby declare and affirm as follows:

1. I am an engineer qualified to take and evaluate measurements on television broadcast signals.
2. In my capacity as Field Engineering Manager for EchoStar Satellite Corp., I oversee the testing and evaluation of television signal strengths.
3. I oversaw the signal strength tests described in Eric Sahl's letter of June 26, 2009 to Mr. Doug Krile, which demonstrated that KYPX could not deliver a usable signal to our Little Rock LRF over-the-air. This is not surprising, since the station is more than 101 miles away from the Little Rock LRF.
4. Arkansas 49 is the only broadcaster who has requested to deliver its signal to us via satellite in the 71 markets where we deliver local-info-local service. All other broadcasters either deliver us a signal over-the-air or via a fiber link.
5. I am fully aware of the lease agreement we have with Clear Channel in Little Rock for the LRF there, collocated at Clear Channel's KLRT television facility. Our lease provides us with the following space at KLRT:

| | |
|---------------------------------|--|
| Total leased ground space: | 10' x 17' |
| Equipment building space: | 9' x 16' |
| Total leased tower space: | Antenna mount height (AGL): 1 (each) 20' mast mounted between 80' and 100' feet. |
| Total off-air receive antennas: | 8 |
| Types of antennas: | Scala Model CL-24 (2 each), Scala Model HDCA-10 (2 each) |

6. With these facilities, we are able to receive all of the currently qualified stations. We do not have the ability to install a satellite dish to receive KYPX under our current lease.

I, Paul B. James, on behalf of EchoStar Satellite Corporation, do hereby declare and affirm, under penalties of perjury, and after first being warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. § 1001), that all statements

made by me in this Certification are made on my own personal knowledge, and those statements are true.

By: 
Paul B. James, Field Engineering Manager
EchoStar Satellite Corporation

Dated: September 24, 2003

DC_DOCS:613334.1
09/24/03 12:34 PM

CERTIFICATE OF SERVICE

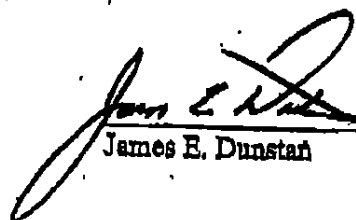
I, James E. Dunstan, hereby certify that on this 25th day of September, 2003, copies of the foregoing "Opposition to Complaint" have been served by U.S. first-class mail, postage prepaid, or by hand delivery, upon the following:

William H. Johnson *
Deputy Chief
Office of the Bureau Chief
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Eloise Gore *
Assistant Chief
Policy Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Lori M. Withrow
Secretary
Arkansas 49, Inc.
1 Shackleford Drive
Suite 400
Little Rock, AR 72211

* Denotes service to the FCC's Washington, D.C. filing location.


James E. Dunstan

DOCKET NO. 03-206

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o This document is confidential (**NOT FOR PUBLIC INSPECTION**)
- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.
- o Microfilm, microform, certain photographs or videotape.
- Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed (**EXCLUDING CONFIDENTIAL DOCUMENTS**) by contacting an Information Technician at the FCC Reference Information Centers) at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician

One Video Cassette